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| APPLICATION NO.                                                                 | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/695,551                                                                      | 10/24/2000  | Roe Peterson         | 1009-04-01          | 2563             |
| 22884                                                                           | 7590        | 07/14/2004           | EXAMINER            |                  |
| MIDDLETON & REUTLINGER<br>2500 BROWN & WILLIAMSON TOWER<br>LOUISVILLE, KY 40202 |             |                      | KYLE, CHARLES R     |                  |
|                                                                                 |             | ART UNIT             | PAPER NUMBER        | 3624             |

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |    |
|------------------------------|------------------------|---------------------|----|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |    |
|                              | 09/695,551             | PETERSON, ROE       |    |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     | MK |
|                              | Charles R Kyle         | 3624                |    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 24 October 2000.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-26 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: It ends with a semicolon.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. They recite at step iii) "including" which appears intended to be "inducing."

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-4, 7, 9-21, 23-24 and 26** are rejected under 35 U.S.C. 102(e) as being anticipated by US 2002/0023038 *Fritsch et al.*

**As to Claim 1,** *Fritsch* discloses the invention as claimed, including in a method of conducting an online auction (Para. 3), the steps of:

- a) providing an auction web site system (Para. 20) including a merchandise database (Para. 26, lines 10-12) of information pertaining to auction lots to be sold (Para.14);
- b) with respect to an auction lot, using said web site system to conduct an auction in the following steps:
  - i) assigning an opening auction price (Para. 16, line 1) and at least one predetermined bid increment (Para. 16, lines 3-6) to said auction;
  - ii) displaying to a bidder the current auction price of said lot (Fig. 5, ele. 370) as well as said predetermined bid increments (Fig. 5, eles. 390 and 370; predetermined bid

increment = Make this bid (\$45.00) -

Current Bid (\$44.00) = \$1.00)

- iii) inducing bidders to place bids by selecting from said predetermined bid increments, the amount of a bid being the current auction price plus the selected predetermined bid increment (Fig. 5, ele. 390), details of said bids being transmitted to and recorded in said web site system (Paras. 20-29);
- iv) upon occurrence of a revision event (Par. 16, lines 16-22), revising said predetermined bid increments and refreshing the display of said revised predetermined bid increments to bidders (Figs. 5 and 6, change in increment from \$1.00 to \$0.25);
- v) upon occurrence of an auction-closing event, accepting no further bids and determining

the winning bidder based on bids having been stored in said Web site system (Fig. 12; Para. 38).

**With respect to Claim 2,** *Fritsch* discloses that a highest bid wins at Background of the Invention.

**With respect to Claim 3,** *Fritsch* discloses that a revision event comprises a manual trigger initiated by a site operator at Para. 16, lines 17-18.

**As to Claim 4,** *Fritsch* discloses a revision event as a preprogrammed condition at Para. 16.

**With respect to Claim 7,** *Fritsch* discloses auction closing based on a preprogrammed condition (equality of bid and offer) at Fig. 12 and Para. 16, lines 12-14.

**Concerning Claim 9,** *Fritsch* discloses manual revision of increments at Para. 16, lines 17-18.

**As to Claim 10,** *Fritsch* discloses recalculation of bid increments at Para. 16, lines 19-20.

**Concerning Claim 11,** *Fritsch* discloses lowering bid increments at Para. 16.

**With respect to Claim 12,** *Fritsch* discloses a single bid increment at Fig. 5.

**With respect to Claim 13,** *Fritsch* discloses plural bid increments at Para.

16.

**As to Claim 14,** *Fritsch* discloses a bidder browser for auction information at Para. 21.

**Concerning Claim 15,** it is a system form of Claim 1 and is rejected in a like manner. *Fritsch* further discloses a web based auction system connected to bidders at Fig. 2, a bid management system containing bid details at Paras. 12 and 26 and an increment setting system at Paras. 15-16.

**As to Claim 16,** *Fritsch* discloses a bidder communicating with the web system from a bidder computer at Fig. 2 and Paras. 26 and 27.

**Concerning Claim 17,** see the discussion of Claims 15 and 14.

**Concerning Claim 18,** see the discussion of Claims 15 and 9.

**Concerning Claim 19,** see the discussion of Claims 15 and 10.

**With respect to Claim 20,** see the discussions of Claims 15 and 6.

**Concerning Claim 21,** see the discussion of Claims 15 and 7.

**Concerning Claim 23,** see the discussion of Claims 15 and 3.

**Concerning Claim 24,** see the discussion of Claims 15 and 4.

**As to Claim 26,** *Fritsch* discloses a medium for storing a computer program operative to perform the method at Paras. 19-30.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 5-6, 8, 22 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0023038 *Fritsch et al* in view of US 6,230,147 *Alaia et al.*

**As to Claim 5,** *Fritsch* discloses the invention substantially as claimed. See the discussion of Claim 4. *Fritsch* does not specifically disclose consideration of time in adjusting bid increments. *Alaia* discloses consideration of time in a bidding process. See *Alaia* at Col. 6, line 62 to col. 7, line 30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify *Fritsch* with consideration of timing as disclosed by *Alaia* to modify bid increments because this would allow auctioneers to improve bid prices by using gradually smaller, more palatable price increases. See particularly *Alaia* at Col. 6, lines 62-67.

**As to Claim 6,** *Fritsch* discloses the invention substantially as claimed. See the discussion of Claim 1. *Fritsch* does not specifically disclose manually closing an auction. *Alaia* discloses this limitation at Col. 9, lines 25-41. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify *Fritsch* with manual auction as disclosed by *Alaia* because this would allow auctioneers more control over the auction process.

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**As to Claim 8,** *Fritsch* discloses the invention substantially as claimed. See the discussion of Claim 7. *Fritsch* does not disclose the consideration of bid timing in closing an auction. *Alaia* discloses this limitation at Col. 5, line 47 to col. 8, line 55, particularly Col. 6, line 62 to col. 7, line 11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify *Fritsch* with the closing based on bid timing of *Alaia* because this would achieve a better auction price by varying closing times.

**With respect to Claim 22,** see the discussion of claims 21 and 8.

**With respect to Claim 25,** see the discussion of claims 24 and 5.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk  
July 6, 2004

Examiner Charles Kyle

